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ORIGINAL

Of Counsel
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July 29, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

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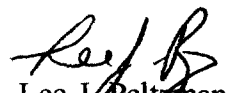
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: MM Docket No. 96-125
Hilton and Albion, New York

Dear Mr. Caton:

Transmitted herewith, on behalf of Albion Broadcasting Associates, is an original and four (4) copies of its Counterproposal in the above-referenced rule making. Please contact the undersigned should questions arise regarding this filing.

Sincerely,


Lee J. Peltzman
Counsel for

ALBION BROADCASTING ASSOCIATES

Enclosure

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**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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JUL 29 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the matter of)
)
Amendment of Section 73.202(b)) MM DOCKET NO. 96-125
) RM-8807, _____
FM Broadcast Stations)
(Hilton and Albion, New York))

To: Chief, Allocations Branch
Mass Media Bureau

COUNTERPROPOSAL

Albion Broadcasting Associates ("Albion Broadcasting"), by its attorney, hereby submits its counterproposal in the above-captioned rule making proceeding. Albion Broadcasting believes that the Commission should allot Channel 238A to Albion, New York, as that community's first local transmission service. In support of its proposal, Albion Broadcasting states the following:

1. By *Notice of Proposed Rule Making*, DA 96-883, released June 7, 1996, the Commission considered the Petition for Rule Making filed by Alan Bishop d/b/a Hilton Broadcasting, which proposed the allotment of Channel 238A to Hilton, New York. However, the allotment of Channel 238A at Hilton will preclude the allotment of Channel 238A to the larger and more significant community of Albion, New York. Aside from that conflict, the allotment of Channel 238A to Albion can be made in compliance with the Commission's minimum distant separation rules as well as the Commission's community coverage rules. See attached Engineering Statement.

2. Albion is a significant community and warrants its own broadcast station. It is the county seat of Orleans County, New York. According to the 1990 U.S. census report, the population of Albion is 6,624 persons while the population of Orleans County is 41,846. Currently, however, the community of Albion as well as Orleans County lack even a single local broadcast station.

3. In comparing the relative needs of Hilton and Albion for an additional transmission service, the Commission must utilize its comparative criteria as set forth in the *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). In that decision, the Commission adopted certain priorities to be used when comparing rule making proposals:

- a. First full-time aural service
- b. Second full-time aural service
- c. First local service
- d. Other public interest matters

[The provisions of second aural service and first local service are treated co-equally.]

4. As between the proposals, Albion should receive the requested allotment. While neither Albion nor Hilton has a local transmission service, Albion has a population of 6,624 persons whereas Hilton has a population of only 5,886 persons. Moreover, Albion is a county seat while Hilton is but a small suburb dependent on the city of Rochester, New York. Therefore, Albion has the greater need for a first local broadcast service.^{1/} The Commission will better fulfill priority (c) by allotting Channel 238A to the community of Albion as that

^{1/} Further, while there are 28 stations currently allotted to Monroe County, not one station is allotted to Orleans County. Such a massive disparity cannot continue to go unremedied.

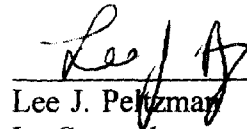
community's first local service. The public interest will clearly be advanced by the allotment of a first local transmission service to that community.

Accordingly, for the reasons stated above, Albion Broadcasting requests that the Commission adopt this counterproposal to allot a first local service to Albion, New York, and deny the mutually-exclusive proposal to allot Channel 238A to Hilton, New York. In the event that the Commission allots Channel 238A to Albion, Albion Broadcasting will promptly file an application for construction permit for that channel and, when granted, will immediately construct its station and commence broadcasting.

Respectfully submitted

ALBION BROADCASTING ASSOCIATES

By:



Lee J. Peltzman
Its Counsel

SHAINIS & PELTZMAN, CHARTERED
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July 29, 1996

Engineering Statement
Petition for Rulemaking
to Amend the FM Table of Allotments (§73.202(b))
Counter Proposal to RM-8807 - MM Docket 96-125
Addition of Channel 238A at Albion, New York

prepared for
Albion Broadcasting Associates

Introduction

Albion Broadcasting Associates ("*Albion Broadcasting*") respectfully requests the Federal Communications Commission to amend Section 73.202(b) of its rules to add FM Channel 238A at Albion, New York instead of Hilton, New York (RM-8807). *Albion Broadcasting* seeks to provide a first local aural service to the city of Albion, New York. In fact, the first local aural service in Albion would be the first local aural transmission service in all of Orleans County, New York.

Ch. 238A at Albion, New York

The proposed reference point for Albion (North 43° 15' 00" West 78° 11' 12") is located within the city of Albion, 0.7 kilometers from the nominal Atlas reference point for Albion New York in order to comply with a minimum distance separation requirement towards WJYE, Ch. 241B at Buffalo, New York. The proposed reference point meets all minimum distance separation requirements with respect to domestic, United States stations. The proposed use of Channel 238A at Hilton, New York would necessitate directionalization to remedy 134.3 kilometer and 20.2 kilometer short-spacings to operating Canadian stations. Likewise, *Albion Broadcasting* is prepared to design a directional facility which will provide a first local aural service in Albion and Orleans County and protect 52 kilometer and 114 kilometer short-spaced operating Canadian facilities.

Included herewith is a table of minimum distance separation requirements towards all pertinent facilities:

Chan.	CALL	Community	Dist.	§73.207 Req'd	
235B	CKQT-FM	Oshawa, ON	93	71	
236B	WNVE	South Bristol Twp, NY	84	69	
237C1	CKDS-FM	Hamilton, ON	129	181	-52
237C1	CKDS-FM	Hamilton, ON	129	164	-35*
<i>*(If the instant proposal is treated as a 3.0 kW/100m Class A, the lesser, 164 km separation applies.)</i>					
238C1	CJBC	Belleville, ON	142	256(B1)	-114
238C1	CJBC	Belleville, ON	142	239(A)	-97**
<i>** (If the instant proposal is treated as a 3.0 kW/100m Class A, the lesser, 239 km separation applies.)</i>					
238A	ADD	Hilton, NY	32	115	-83
<i>(The instant proposal is mutually exclusive with Ch. 238A at Hilton, NY)</i>					
239B	WPIG	Olean, NY	137	113	
239C1	VACANT	Barrie, ON	182	181	
240B	VACANT	Ajax, ON	106	84	
241B	WJYE	Buffalo, NY	69	69	

Albion Broadcasting respectfully petitions the Commission to request from Canada that a specially coordinated short-spaced allotment be made for Albion in place of Hilton, New York. In the event that a specific proposal for a directional "envelope" to protect the two Canadian stations is required in order to submit the proposal to the Canadian Government for concurrence, or, if it is appropriate to limit the proposal to a 3.0 kW/100 meter facility in accordance with the 1991 FM Agreement between the Governments of Canada and the United States, *Albion Broadcasting* will comply in order to provide a first local aural service to Albion and Orleans County.

The use of Channel 238A at *Albion Broadcasting's* proposed reference point (North 43° 15' 00" West 78° 11' 12") is within the city limits of Albion, 2.6 kilometers from the farthest side of the city of Albion. Either a 6.0 kW/100 meter Class A facility, or a limited, 3.0 kW/100m facility will be able to encompass the community of Albion with a 3.16 mV/m or better signal strength contour and still provide protection to the Canadian stations.

Albion, New York vs Hilton, New York

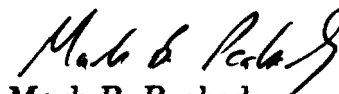
The city of Albion is the county seat of Orleans County, New York. There are no aural services allotted to any of the four established communities in Orleans County (Albion, Holley, Medina, or Lyndonville). The population of Albion, (1990 U.S. Census) is 6,624. The population of Orleans County is 41,846 (1990 U.S. Census). Hilton is a small suburban community at the outskirts of the urbanized area for Rochester, New York in Monroe county, with a population of only 5,886 (1990 U.S. Census). There are 28 stations allotted to communities in Monroe county: thirteen (13) commercial FM stations; seven (7) AM stations; and eight (8) non-commercial educational FM stations.

Conclusion

With a minor site restriction of 0.7 km, *Albion Broadcasting* respectfully requests that the Commission amend Section 73.202(b) to allot Channel 238A to Albion, New York instead of Hilton, New York with the reference point North 43° 15' 00" West 78° 11' 12". Allotment of Channel 238A to Albion will provide a first local aural service to the county seat of Orleans County and the first local aural transmission service to any of the communities in Orleans County.

Certification

I, Mark B. Peabody, hereby certify that the foregoing statement was prepared by me or under my direction, that it is true and correct to the best of my knowledge and belief, and that my qualifications are a matter of record with the Federal Communications Commission.

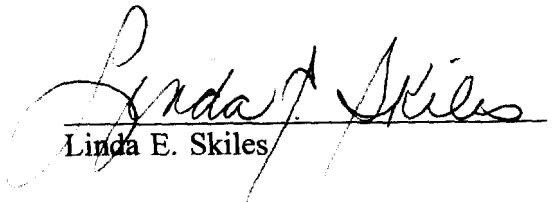

Mark B. Peabody
Friday, July 26, 1996

CERTIFICATE OF SERVICE

I, Linda E. Skiles, Office Administrator, of the law firm of Shainis & Peltzman, do hereby certify that copies of the foregoing document were sent, via First Class Mail, this 29th day of July, 1996, to the office of the following:

John A. Karousos
Federal Communications Commission
2000 M Street, N.W. - Room 554
Washington, D.C. 20554

Mr. Alan S. W. Bishop
d/b/a Hilton Broadcasting
679 Furman Road
Fairport, NY 14450


Linda E. Skiles